

BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM
EXECUTIVE SUMMARY FOR RULE ADOPTION

AGENDA # _____

AGENDA ITEM SUMMARY - The Board initiated rulemaking at the January 25, 2002 meeting to amend the Water Quality Act administrative enforcement rules. Thomas Bowe was appointed hearing officer. On February 14, 2002 notice was printed in the Montana Administrative Register. The Enforcement Division mailed approximately 1,600 copies of the notice to individual permit holders and interested persons to inform them of the proposed amendments. A hearing was held April 9, 2002. One change to the proposed rule is recommended based on the comments received. The Department's proposed Response to Comments is provided.

LIST OF AFFECTED RULES - The proposed rules would amend ARM 17.30.2003.

AFFECTED PARTIES SUMMARY - The proposed amendments would affect all parties that are subject to an enforcement action initiated by the Department that seeks the assessment of an administrative penalty for a violation of the Montana Water Quality Act.

SCOPE OF PROPOSED PROCEEDING – The Department requests that the Board adopt the proposed amendments to ARM 17.30.2003.

BACKGROUND – Section 75-5-611, MCA, sets forth two procedures for the Department to follow to assess an administrative penalty for violations of water quality laws and requirements. The first procedure is provided in Section 75-5-611(1), MCA, which states that when the Department has reason to believe that a violation has occurred, it may issue a notice letter to the alleged violator. The notice letter must state the specifics of the violation, the required corrective action, and the amount of administrative penalty that will be assessed if the violation is not corrected. This section is interpreted to mean that if the corrective action is completed, the Department may not assess an administrative penalty. A second procedure is provided in § 75-5-611(2), MCA, which states that if the violation is a violation of §75-5-605, MCA, the Department may issue an administrative penalty order in lieu of the notice letter required in §75-5-611(1), MCA.

The existing ARM 17.30.2003 provides procedures for assessment of penalties only under the first procedure under §75-5-611(1), MCA. At the time the existing rule was adopted, the Department believed that the second procedure was precluded, except in limited cases, by provisions in a later statute (§ 75-5-617, MCA). However, the Department subsequently determined that the two statutes did not conflict with each other. Consequently, the Department proposed this rulemaking to fully implement both sections of § 75-5-611, MCA.

The proposed amendments to the rules create a procedure to implement §75-5-611(2), MCA, and define which violations of §75-5-605, MCA, are subject to a penalty under the §75-5-611(2), MCA.

HEARING INFORMATION - The Board conducted a hearing on April 9, 2002. In response to

comments, one change to the proposed rule is recommended.

BOARD OPTIONS - The Board may:

1. Adopt the rule with the proposed change;
2. Decline to adopt the rule with the proposed change;
3. Adopt the rule with other changes in response to comments; or
4. Decline to adopt the rule.

DEQ RECOMMENDATION - The Department recommends that the Board adopt the rule with the proposed change.

ENCLOSURES -

1. Presiding Officer's Report, including hearing transcript, public comments and response to comments.
2. Notice of Adoption of Amendment of ARM 17.30.2003.